TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 147.

ADOLPH LIEBENROTH, IWAN VON AUW, WILLIAM GRAHAM, AND HERMAN SCHLIECHER, PLAINTIFFS IN ERROR,

vs.

WILLIAM H. ROBERTSON, LATE COLLECTOR OF THE PORT OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 2, 1888.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 24, 1891.

1 UNITED STATES OF AMERICA, *ss:*

Seal of U. S. Circuit Court, South. Dist. New York.

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, between Adolph Liebenroth, Iwan Von Auw, William Graham, and Herman Schliecher, plaintiffs, and William H. Robertson, defendant, a manifest error hath happened, to the great damage of the said plaintiffs, as by their complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October, eighteen hundred and eighty-eight, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Samuel F. Miller, senior associate justice of the said Supreme Court, the twelfth day of September, in the year of our Lord one thousand eight hundred and eighty-eight.

JOHN A. SHIELDS, *Clerk.*

The foregoing writ is hereby allowed.

E. HENRY LACOMBE,
Circuit Judge.

2 [Endorsed:] E. & A. A. 764. 10311. U. S. Supreme Court. Adolph Liebenroth *et al.*, plaintiffs in error, against William H. Robertson, defendants in error. Writ of error. Service of a copy of the within writ of error is hereby admitted this 12 day of September, 1888. Stephen A. Walker, attorney for def't in error. U. S. circuit court. Filed Sep. 12, 1888. John A. Shields, clerk.

UNITED STATES OF AMERICA, *Southern District of New York,* } *ss:*

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from three to thirty-two, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause of Adolph Liebenroth, Iwan Von Auw, William Graham, and Her-

man Schleicher, plaintiffs in error, against William H. Robertson, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 27th day of September, in the year of our Lord one thousand eight hundred and eighty-eight, and of the Independence of the United States the one hundred and thirteenth.

Seal of U. S. Circuit Court, South. Dist. New York.

JOHN A. SHIELDS, *Clerk.*

3 Superior Court of the City of New York.

ADOLPH LIEBENROTH, IWAN VON AUW, WILLIAM GRAHAM, & HERMAN SCHLEICHER, Plaintiffs,
vs.
WILLIAM H. ROBERTSON, Defendant.
} Summons. No. 6.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the plaintiffs' attorney within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear or answer judgment will be taken against you by default for the relief demanded in the complaint.

Dated New York, Jan'y 15, 1886.

CHAS. CURIE,
Plaintiffs' Attorney, Office No. 44 Exchange Place, New York City.

4 [Endorsed:] N. Y. superior court. Adolph Liebenroth *et als.*, plaintiffs, against William H. Robertson, defendant. Summons. Chas. Curie, plaintiffs' attorney, 44 Exchange place, New York city. Due service hereof admitted this 15 day of Jan'y, 1886. (S'g'd) C. H.

5 The President of the United States of America to the judges of the superior court of the city of New York, Greeting:

We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York, in the second circuit, shall be certified of a certain cause commenced before you against William H. Robertson, defendant, by Adolph Liebenroth, plaintiffs, do therefore command you that the record and proceedings in the said cause you distinctly and openly send to the said circuit court, at the city of New York, on the 11 day of Feb'y, 1886, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein,

[L. S.]

together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness Morrison R. Waite, Esquire, Chief Justice of the Supreme Court of the United States, the 5th day of February, in the year one thousand eight hundred and eighty-six.

TIMOTHY GRIFFITH, *Clerk.*

WILLIAM DORSHEIMER,
United States Attorney, Attorney for Defendant.

6 [Endorsed:] U. S. circuit court. A. Liebenroth *vs.* William H. Robertson. Copy certiorari. William Dorsheimer, U. S. attorney, attorney for defendant. Take notice that the within is a copy of a certiorari this day issued out of the circuit court of the United States for the southern district of New York. New York, Feb'y 5, 1886. Yours, William Dorsheimer, U. S. attorney, attorney for defendant. To C. C., plaintiff's attorney. Due service of a copy of the within and of the above notice is hereby admitted. New York, Feb'y 6, 1886. (S'g'd) Charles Curie, plaintiff's attorney.

Bill of Particulars.

Name of Importer: Liebenroth, Von Auw & Co.

		Description of goods.	Whence imported.	Name of vessel.	Date of invoice.	Date of entry at custom-house.	Amount of duty illegally exacted.	Date of payment of duties in excess.	Protest filed.	Date of appeal to Secretary of the Treasury.	Date of Secretary's decision.
					1885.	1885.		1885.	1885.	1885.	1885.
61	1	Albums	Hamb'g	Rugia	Ap'l 4	Ap'l 30	9 45	Ap'l 30	May 22	May 22	Oct. 21
	2	"	"	Lessing	" 7	" 27	56 55	" 27	" 22	" 22	" 21
	3	"	"	Rhaetia	" 20	May 4	72 30	May 4	June 5	June 5	" 21
	4	"	"	Moravia	" 28	" 13	51 45	" 13	" 5	" 5	" 21
	5	"	"	Suevia	May 16	June 2	69 45	June 2	" 24	" 24	" 21
	6	"	"	Frisia	" 5	May 25	3 90	May 25	" 24	" 24	" 21
	7	"	"	Westphalia	" 13	" 27	37 65	" 27	" 24	" 24	" 21
	8	"	"	Bohemia	" 19	June 5	75 00	June 5	" 29	" 29	" 21
	9	"	"	Wieland	" 23	" 6	112 80	" 6	" 29	" 29	" 21
	10	"	"	Rugia	" 25	" 15	21 15	" 15	July 11	July 11	No ans. rec'd.
	11	For coverings, albums & other mdse	"	Lessing	Apr. 7	Ap'l 27	3 90	Ap'l 27	May 22	May 22	"
	12	putting up " "	"	Rugia	" 14	" 30	1 20	" 30	" 22	" 22	"
	13	packing " "	"	Rhaetia	" 20	May 4	4 80	May 4	June 5	June 5	"
	14	charges on " "	"	Moravia	" 28	" 13	4 05	" 13	" 5	" 5	"
	15	" " "	"	Westphalia	May 13	" 27	2 55	" 27	" 24	" 24	"
	16	" " "	"	Frisia	" 5	" 25	3 40	" 25	" 24	" 24	"
	17	" " "	"	Suevia	" 16	June 2	5 55	June 2	" 24	" 24	"
	18	" " "	"	Bohemia	" 19	" 5	14 85	" 5	" 29	" 29	"
	19	" " "	"	Wieland	" 23	" 6	6 75	" 6	" 29	" 29	"
	20	" " "	"	Rugia	" 25	" 15	1 65	" 15	July 11	July 11	"
	21	" " "	"	Frisia	June 16	" 30	60	" 30	Aug. 5	Aug. 5	"

Amended Nov. 15, '86, per order of court dated Oct. 29th, 1886.

CHAS. CURIE,
Per M. J. BINGE.

8 [Endorsed:] U. S. circuit court, southern district of New York. Adolph Liebenroth & *al.* against William H. Robertson. Bill of particulars. New York, Feb'y 10, 1886. To William Dorsheimer, Esquire, defendant's attorney. Sir: Please to take notice that this action is brought to recover duties illegally exacted by the defendant as collector of customs at the port of New York, and the within is the plaintiffs' bill of particulars. Chas. Curie, plaintiffs' attorney, 44 Exchange place, New York city.

9 Circuit Court of the United States for the Southern District of New York.

ADOLPH LIEBENROTH, IWAN VON AUW, WILLIAM GRAHAM, and HERMAN SCHLEICHER, Plaintiff-,
against
WILLIAM H. ROBERTSON, Defendant.
} Complaint.

Plaintiff complains—

1st. That defendant was, during the time hereinafter named, collector of customs of the United States at the port of New York.

2d. That plaintiff was, during said time, in trade under the firm name of Liebenroth, Von Auw & Co., and as such duly imported and enterrd at the port of New York the goods described in the bill of particulars annexed.

3d. The defendant, as such collector, exacted from plaintiff, as and for duties thereon, and plaintiff, in order to obtain said goods, was compelled to pay and did pay the sum of five hundred and fifty-two $\frac{55}{100}$ dollars in excess of the amount required by law.

4th. The plaintiff filed with said defendant due and timely protests in writing upon each entry of said goods against his decision exacting such duty, setting forth distinctly and specifically the grounds of objection thereto, and also as above stated.

5th. That plaintiff made due and timely appeals in each case to the Secretary of the Treasury, who has affirmed the decision of the defendant as to certain of said entries, and as to the rest of said entries has neglected to answer said appeals, and more than ninety days had elapsed since said unanswered appeals when this action was commenced.

6th. That the bill of particulars hereto annexed states for each importation separately the date of entry at the custom-house, of the payment of duty in excess, of the filing of the said protests, of the appeal to the Secretary of the Treasury, and of his decision thereon, together with the other particulars required by law, and is made a part hereof.

7th. That said sum so exacted as aforesaid has never been repaid to plaintiff and is still due and owing to him.

Wherefore plaintiff demands judgment against defendant for five hundred and fifty-two $\frac{55}{100}$ dollars, with interest on the several sums named in the bill of particulars from the several dates of payment as appear thereby, together with the costs and disbursements of this action.

CHAS. CURIE,
Attorney for Plaintiff.

10 [Endorsed:] U. S. circuit court. Adolph Liebenroth *et als.*, plaintiffs, against William H. Robertson, defendant. Complaint. Chas. Curie, plaintiffs' attorney, 44 Exchange place, New York city.

11 Circuit Court of the United States for the Southern District of New York.

ADOLPH LIEBENROTH & *al.*
versus
WILLIAM H. ROBERTSON, Collector, etc.

The defendant answers to the complaint as follows :.

I. He denies that the true duty or that the true and lawful rate of duty on the goods referred to in the complaint was as stated in the complaint, and he denies that the plaintiffs were compelled to pay or did pay defendant, as collector or otherwise, the sum stated in the complaint or any sum in excess of the amount required by law as duties upon the said goods, or that any sum of money unauthorized by law was exacted as duties on said goods or otherwise.

II. He denies that the plaintiffs filed with defendant any protest or protests in writing in which the grounds of objections to the exaction of duties on said goods were distinctly and specifically stated.

III. He denies that the sum stated in the complaint or any
12 sum is now due and owing the plaintiffs.

IV. He denies that he has any knowledge or information sufficient to form a belief as to whether the goods alleged in the complaint to have been imported at the times therein mentioned were in fact such goods as are described in the said complaint.

V. And, further answering, defendant alleges that all moneys received by him from the plaintiffs in respect of the importations in the complaint alleged to have been made were demanded of plaintiffs, and were by plaintiffs voluntarily paid to him in his capacity as collector of customs as and for duties due the United States on imported merchandise, and were forthwith, before the commencement of this action and before the receipt by the defendant of any protest or objection on the part of the plaintiffs, paid over by the defendant in his official capacity aforesaid to the United States and placed beyond his control.

VI. And, further answering, defendant alleges that all moneys received by him from the plaintiffs in respect of the importations in the complaint alleged to have been made were sums due
13 from plaintiffs to the United States as duties according to the rate of duty imposed by law upon articles of merchandise imported by plaintiffs and assessed with duty, and no other sums than duties regularly assessed and ascertained and liquidated according to law upon plaintiffs' entry thereof were collected or received by defendants from the plaintiffs.

Wherefore defendant demands judgment that the complaint be dismissed with costs.

STEPHEN A. WALKER,
United States Attorney, Attorney for the Defendant.

(Endorsed :) U. S. circuit court, southern district of New York. Adolph Liebenroth & *al. vs.* Wm. H. Robertson, collector, etc. Answer. Stephen A. Walker, United States attorney, attorney for de-

fendant. Due service of a copy of within answer is hereby admitted. New York, M'ch 23, 1886. (S'g'd) Charles Curie, plaintiffs' attorney.

14 At a stated term of the circuit court of the United States of America for the southern district of New York, on Thursday, the fifth day of January, in the year of our Lord one thousand eight hundred and eighty-eight.

Present: The Honorable E. Henry Lacombe, circuit judge.

ADOLPH LIEBENROTH *et al.* vs. WILLIAM H. ROBERTSON. } 10311.

Now come the plaintiffs, by Stephen G. Clarke, Esq., their counsel, and move the trial of this cause; also comes the defendant, by MacGrane Coxe, Esq., ass't U. S. att'y, his attorney. Thereupon a jury is empanelled, and the cause proceeds to trial. After hearing the evidence of the parties and the argument of counsel the jury, by direction of the court, find a verdict for the defendant.

It is ordered that plaintiffs have a stay of proceedings on said verdict for thirty days in which to prepare and serve a cave.,
15 with leave to turn the same into a bill of exceptions.

An extract from the minutes.

[Seal of U. S. Circuit Court, S. D. of N. Y.]

(S'g'd) JOHN A. SHIELDS, *Clerk.*

16 United States Circuit Court, Southern District of New York.

ADOLPH LIEBENROTH & *al.* vs. WILLIAM H. ROBERTSON. } Judgment.

SEPT. 7, 1888.

The issues in this action having been brought on for trial before Mr. Judge Lacombe and a jury at a circuit court of the October term, 188–, and the issues having been tried, and a verdict for the defendant having been duly rendered on the fifth day of January, 1888, and his costs having been adjusted at $48.85:

Now, on motion of Stephen A. Walker, United States attorney for defendant––

It is adjudged that the defendant have judgment against the plaintiffs upon the issues in this action, and that he recover the sum of $48.85, his taxed costs, and have execution therefor.

Judgment signed this seventh day of September, 1888.

(S'g'd) G. E. ROGERS,
Deputy Clerk.

17 [Endorsed:] United States circuit court. Adolph Liebenroth & *al. vs.* William H. Robertson. Judgment-roll. Stephen A. Walker, United States attorney, attorney for defendant. Filed —— —, 188–. Costs, $48.85. (File-mark:) U. S. circuit court. Filed Sept. 7, 1888. John A. Shields, clerk.

18 U. S. Circuit Court, Southern District of New York.

ADOLPH LIEBENROTH, IWAN VON AUW, William Graham, and Herman Schliecher *vs.* WILLIAM H. ROBERTSON. } 10311. Bill of Exceptions.

Afterwards and on the 5th day of January, 1888, at a stated term of this court held in the city of New York, the issues in this case came on for trial before the Honorable E. Henry Lacombe, a judge of this court, and a jury duly empaneled to try the issues therein.

Plaintiffs introduced in evidence certain entries and invoices of the plaintiffs of the goods in question made in the year 1885.

Also protests and appeals.

The substantive part of the protest is as follows:

"We hereby protest against your decision and assessment of duties as made by you and the payment of more than as below claimed on our importations below mentioned, consisting of certain bound albums or album books, claiming that under existing laws and section 2499 and Schedule M, act of March 3, 1883, said goods are liable to only 15% ad val. as a manufacture of which paper is the component material of chief value not otherwise specially enumerated or provided for, or claiming that under existing laws, and par-
19 ticularly by said section and said schedule, they are liable at only 20% ad val. as 'blank books,' or said goods are liable at no more than 25% ad val. as 'books' under same section and schedule."

If further appeared that duty was exacted and paid at the rate of thirty per cent. ad valorem on said goods as manufactures or articles of leather or of which leather is a component part.

JAMES S. DUMOND, being called in behalf of the plaintiffs and duly sworn, testified in substance as follows:

I am now and have been for about eleven years an examiner in the appraiser's department. These goods were given to me, I think, two years ago, in June or July. I passed the goods described in the invoices in this case and examined them. They were albums similar to these. (Albums shown witness.) (Another album shown witness). This is a more expensive album than any I have here. (Examines invoice.) Yes; there are invoices here to cover that album. These albums are composed of paper, leather, metal clasps, and plated clasps. There is a little cloth in the back of them; that is the only cloth in them, and in between the leaves. Most of them have gold-leaf. I don't know whether there is any gold-leaf here or not. Most of them are Dutch metal. Of the various component

materials of these albums embraced in these invoices, in ninety-nine cases out of a hundred paper is worth more than all the rest of the material put together.

And being cross-examined:

"L. C. V." means leather chief value. (Exhibit 8*i* shown
20 witness.) I put down the words "manufacture of leather and paper, L. C. V." on that invoice. The albums represented in this invoice are similar to the ones in this importation. (Exhibit 9*i* shown witness.) I wrote the words "manufacture of leather and paper, L. C. V., thirty per cent." on that invoice and on all these invoices as the result of my examination of the goods that came in.

And being re-examined:

I have not the least doubt that paper is the chief value in the albums covered by these invoices. My reason for making that return, to which my attention has been called, that leather was the chief value, is this: When I took charge of these goods I never had any experience in that kind of goods. They had been classified that way for a number of years, and when the tariff was changed they even went so far as to classify them as manufactures of metal, leather, and paper, which was overruled by the department. Those invoices were reliquidated again. I returned the leather here as chief value because I did not know but what it was until I went to work and investigated the thing and had albums taken apart and found what were the component parts of them.

And being further cross-examined:

I am willing to say that, although upon these papers appears my memorandum to the effect that after examination those goods contained leather as the chief value, I can remember that those goods were different from what I said. I made an error because I did not go to work to post myself—because it had been a customary thing for years.

21 IVAN VAN AUW, one of the plaintiffs, being duly sworn in his own behalf, testified as follows:

I am one of the firm of Liebenroth, Van Auw & Co., manufacturers and importers of blank books, leather goods, importers of albums, and similar goods. (Albums shown witness.) This is a book which came in one of these importations. I can only swear to this one. (Album indicated by witness is marked Exhibit 12.) The other four albums are similar goods to those covered by these invoices in question, similar in material and construction. These samples are as near as you can match those in the general description of materials. In respect to value, material, general style of albums, and the value of the materials in them, the only difference is in the pattern. The only difference in the interior would be in the color, and the only difference in the exterior would be the pattern of the embossed stamp and the pattern of the clasp. The trade

name for these articles is photograph albums. Paper is the component material of chief value in albums such as are covered by the invoices and importations in question.

Being cross-examined:

We keep in our establishment, beside photograph albums, blank books, memorandum books, scrap books, pass books, and a number of other articles manufactured and imported. These albums are not sold in trade under the name of "blank books." I have handled most of the invoices and the goods that came after the importation in the spring of 1885. I recollect seeing these im-
22 portations. I could not say I have seen every book in these importations, but I have had the general management of the importations; saw the general goods as they were imported, and I have gone over all the samples; have no independent recollection of these particular importations aside from the general run of my business.

Being further examined:

The class of goods known as photographic albums are bound in various ways, they come in leather, they come in paper bindings, they come in plush, and they come in cloth. Some of them have had wooden covers on, and I think some are bound in celluloid, but we have not imported celluloid. Have been in present business nearly thirty years. The inside of the album is always made of paper. I think the first photograph albums were imported twenty-six or twenty-seven years ago, and the importations have been continued since, the album changing in size and design; they have also been manufactured here. During all that time the part to hold the picture has been made of paper.

Being further cross-examined:

In the invoice marked Exhibit 9*i* the value of the albums varies from 4 marks and 40 pfennigs to 49 marks and 75 pfennigs.

In the invoice Exhibit 8*i* the values vary from $\frac{74}{48}$ down to $\frac{4}{45}$, and even to $\frac{3}{29}$.

In the invoice Exhibit 10*i* they vary in their foreign value from 11 marks a dozen to 171 marks a dozen.

23 These samples do not represent albums worth more than 46 marks a dozen. There is no sample in court of albums worth as much as 171 marks per dozen or as much as 100 marks per dozen. The whole range of albums, from 46 marks per dozen to 171 marks per dozen, is not represented by samples in this case. Exhibit 12 represents a value of 46 marks; No. 13, 43½ marks; No. 14, 31 marks; No. 15, 37.75 marks; No. 16, 44½ marks. We import a great many albums without covers and cover them here; it has been the practice for five or six years. There is a difference in the size of the high-priced and low-priced albums; also a difference in the quality of the material. The low-price albums are what we call octavo albums, to contain a small picture, what they call carte-de-visite, one on a page. The expensive albums are folio size, hav-

ing four cabinet pictures on one page. The expensive ones are more than double the size of the others. The proportion of the fine goods in those invoices is much larger than the general importations are.

In those goods of which samples are here paper is of chief value. There may be a few exceptional cases where the leather is of the chief value. For instance, if they are bound in Turkey morocco the leather might be of chief value; but they are a very small proportion of the importations. The difference in value between the low-priced albums and the high-priced albums does not depend entirely upon the cover, but upon the cover and inside both. The qualities of the paper in these various-priced albums vary as much as the qualities of covers, and other materials vary in the same proportion.

24 Witness being shown Exhibits 17 and 18 says they are all paper. The value of the former is fifteen marks a dozen, the inside just as it is, and the latter is forty-six marks. If made up, its value would depend upon the material that was put on it. It could be made to be worth about 100 marks. (Exhibit 17 shown witness.) There are much poorer qualities of paper in that sized album than in this. Sample 18 has about the best quality of paper that we put in albums of that size. The larger-sized paper would be heavier, but the quality of the paper would be the same. The inside of Exhibit 17 corresponds in quality with Exhibits 12, 13, and 16. Exhibit 18 does not correspond with the insides of these samples; it is superior to any of these. I have had calculations in detail of the value of all the elements that make up albums like the four exhibits made up in our factory by our manager, and are correct as far as I have knowledge.

ALFRED C. HAFLER, being called as a witness in behalf of the plaintiffs and duly sworn, testified in substance:

I have charge of the manufacturing works of Cox Sons & Co., manufacturers of stationery, manufacturers of photographic albums, and general stationers. I have occupied that position about two and a half years, though I had some previous experience in the same department; have been familiar with the manufacture of albums a longer time than that. I have made a careful examination of Exhibit No. 15 with a view to determine the relative

25 value of the paper and leather. In the course of my business my duties have been almost everything pertaining to the running of the manufacturing business, the making of calculations, the buying of stock, the supervision of the work more or less, as of course it is done through the interposition of the subforeman. I was confidential clerk and correspondent for probably another three years. Prior to that I was assistant book-keeper, and also took the position of book-keeper during the absence of the book-keeper and death of one of them. Prior to that, an entry clerk, where I started about fourteen years ago—in August, 1874. On the book marked No. 15, that I have examined, the paper will amount to $27.12 per hundred books; the leather in that book will cost from eighteen to twenty-one cents apiece, eighteen to twenty-one

dollars a hundred. My original calculation was based on eighteen dollars, but in order to make the thing absolutely fair I allowed twenty-one dollars, so as to be sure I would not be making any mistake.

Being cross-examined, witness said that is not the relative value between the paper part and the leather part in all leather-covered albums. In some instances, as the value of the album rises, the value of the cover rises more than the value of the paper. The other exhibit which you have handed me here would run the other way. Your paper would increase more than your leather; it is a larger-sized book. You would only require a quarter foot more leather. It would be only a slight increase on the leather, but a very much larger increase in the cost of the book—that is,
26 in this one instance. I never saw a photographic album without paper inside; the inside is always made of paper, and bound in everything from silk plush down to paper.

At the close of the foregoing testimony plaintiffs rested, and the attorney for the defendant moved for a direction of a verdict in favor of the defendant.

The court thereupon directed a verdict for the defendant; to which direction the plaintiffs, by their counsel, then and there duly excepted, and the exception was allowed.

And inasmuch as the foregoing matters of law and fact and the several exceptions taken and made do not appear upon the records of the trial therefore; upon the prayer of the plaintiffs, by their counsel, the said judge has signed the foregoing as and for the bill of exceptions in this case as of the 5th day of January, 1888.

Dated New York, August 1, 1888.

Consented to.

E. HENRY LACOMBE,
Circuit Judge.

CHARLES CURIE,
Attorney for Plaintiffs.

STEPHEN A. WALKER,
Attorney for Defendant.

(Endorsed:) U. S. circuit court, southern district of New York. Adolph Liebenroth *et al. vs.* William H. Robertson. Bill of exceptions. Charles Curie, Esq., attorney for plaintiffs, 44 Exchange place, N. Y. city. U. S. circuit court. Filed Aug. 1, 1888. John A. Shields, clerk.

27 Supreme Court of the United States.

ADOLPH LIEBENROTH, IWAN VON AUW, William Graham, and Herman Schliecher, Plaintiffs in Error,
vs.
WILLIAM H. ROBERTSON, Defendant in Error.
} Assignment of Errors.

Afterwards, to wit, on the second Monday of October, in the same

term, before the justices of the said court, at the Capitol in Washington, come the said plaintiffs in error, by Stephen G. Clarke, their attorney, and say that in the record and proceedings aforesaid there is manifest error, in this, to wit: that by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given, was given for the said defendant in error against the said plaintiffs in error, whereas by the law of the land the said judgment ought to have been given for the said plaintiffs against the said defendant.

And the said plaintiffs pray that the judgment aforesaid, for the error aforesaid and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that they, the said plaintiffs, may be restored to all things which they have lost by occasion of said judgment, &c.

28 [Endorsed:] United States Supreme Court. Adolph Liebenroth *et al.*, plaintiff- in error, *vs.* William H. Robertson, defendant in error. Assignment of error. Stephen G. Clarke, attorney for plaintiffs in error. Due service of a copy of the within assignment of error is hereby admitted this 12th day of September, 1888. (S'g'd) Stephen A. Walker, attorney for defendant in error. (File-mark:) U. S. circuit court. Filed Sept. 12, 1888. John A. Shields, clerk.

29 Supreme Court of the United States.

ADOLPH LIEBENROTH, IWAN VON AUW, WILLIAM GRAHAM, and HERMAN SCHLEICHER, Plaintiffs in Error,
vs.
WILLIAM H. ROBERTSON, Defendant in Error. } Joinder in Error.

And afterwards, to wit, on the second Monday of October, in said term, the said defendant in error, by Stephen A. Walker, his attorney, comes here into court and says that there is no error, either in the record or proceedings aforesaid or in the giving of the judgment aforesaid.

And he prays that the said Supreme Court, before the justices thereof now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

(S'g'd) STEPHEN A. WALKER,
Attorney for Defendant in Error.

30 [Endorsed:] 10311. United States Supreme Court. Adolph Liebenroth & *al.*, plaintiffs in error, *vs.* William H. Robertson, defendant in error. Joinder in error. Stephen A. Walker, attorney for defendant in error. Due service of a copy of the within joinder in error is hereby admitted this 12 day of Sept., 1888. (S'g'd) Stephen G. Clarke, attorney for plaintiff- in error. To Stephen G. Clarke, attorney for plaintiff- in error. (File-mark:) U. S. circuit court. Filed Sept. 12, 1888. John A. Shields, clerk.

31 Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

ADOLPH LIEBENROTH *et al.* }
vs. } Bond for Damages and Costs.
WILLIAM H. ROBERTSON. }

Know all men by these presents that we, Julius Binge, of the city of New York, and William Waterbury, Jr., of the city of Brooklyn, are held and firmly bound unto the above-named William H. Robertson in the sum of two hundred and fifty ($250) dollars, to be paid to the said William H. Robertson; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the seventh day of September, in the year of our Lord one thousand eight hundred and eighty-eight.

Whereas the above-named Adolph Liebenroth has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named Adolph Liebenroth *et al.* shall prosecute said writ of error to effect and answer all costs if he fail to make his assignments of error good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

(S'g'd) JULIUS BINGE. [L. S.]
(S'g'd) WILLIAM WATERBURY, JR. [L. S.]

Sealed and delivered and taken and acknowledged this 7th day of September, 1888, before me—

(S'g'd) M. J. BINGE.

32 [Endorsed:] U. S. circuit court, southern district of New York. Adolph Liebenroth & *als. vs.* Wm. H. Robertson. Bond for costs on writ of error. Approved as to form, amount, and sufficiency of the sureties. Sept. 12th, 1888. (S'g'd) E. Henry Lacombe, circuit judge. (File-mark:) U. S. circuit court. Filed Sept. 12, 1888. John A. Shields, clerk.

UNITED STATES OF AMERICA, }
Southern District of New York, } *ss.:*

Julius Binge and William Waterbury, Jr., being duly sworn, both depose and say that they are worth the sum of two hundred and fifty dollars each, over and above all their just debts and liabilities.

(S'g'd) JULIUS BINGE.
(S'g'd) WILLIAM WATERBURY, JR.

Sworn to this 7th day of Sept., A. D. 1888, before me—

(S'g'd) M. J. BINGE,
[NOTARIAL SEAL.] *Notary Public, N. Y. Co.*

33 UNITED STATES OF AMERICA, *ss:*

To William H. Robertson, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October, eighteen hundred and eighty-eight, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Adolph Liebenroth, Iwan Von Auw, William Graham, and Herman Schliecher are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Dated September 12th, 1888.

E. HENRY LACOMBE,
Circuit Judge.

34 [Endorsed:] E. & A. A. 764. 10311. U. S. Supreme Court. Adolph Liebenroth *et al.*, plaintiffs in error, against William H. Robertson, defendant in error. Citation. Stephen G. Clarke, attorney for plaintiffs in error. Due service of a copy of the within citation is hereby admitted this 12 day of September, 1888. Stephen A. Walker, attorney for defendant in error. U. S. circuit court. Filed Sep. 12, 1888. John A. Shields, clerk.

Endorsed on cover: S. New York C. C. U. S. No. 147. Adolph Liebenroth, Iwan Von Auw, William Graham, and Herman Schliecher, plaintiffs in error, *vs.* William H. Robertson, late collector of the port of New York. Filed October 2, 1888.

Office Supreme Court, U. S.
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JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 147.

ADOLPH LIEBENROTH, IWAN VON AUW, WILLIAM GRAHAM AND HERMAN SCHLIECHER,

Plaintiffs in Error,

vs.

WILLIAM H. ROBERTSON, LATE COLLECTOR OF THE PORT OF NEW YORK.

BRIEF FOR PLAINTIFFS IN ERROR.

EDWIN B. SMITH,
STEPHEN G. CLARKE,
Of Counsel.

CHARLES CURIE,
44 EXCHANGE PLACE,
New York,
Plaintiffs' Attorney.

Supreme Court of the United States.

ADOLPH LIEBENROTH, IWAN VON AUW, WILLIAM GRAHAM and HERMAN SCHLIECHER,
Plaintiffs in Error,

AGAINST

WILLIAM H. ROBERTSON, Late Collector of the Port of New York.

October Term, 1881.
No. 147.

BRIEF IN BEHALF OF PLAINTIFFS IN ERROR.

Statement.

The plaintiffs in the year 1885 imported at the Port of New York and made entry thereof with the Collector certain photographic albums upon which the defendant, as Collector, assessed duty at the rate of 30 per cent. *ad valorem* as manufactures of leather or of which leather is the component part, which rate of duty was paid by the plaintiffs under protest.

The claim in the protest upon which the plaintiffs rely is that under Schedule M, Act of March 3, 1883, the goods in question are liable to a duty of only 15% *ad valorem* as a manufacture of which paper is the component material of chief value (Record, p. 8).

The contrasting statutes under which the duty was

assessed and under which it is claimed to be assessed read as follows:

"All manufactures and articles of leather, or of which leather shall be a component part, not specially enumerated or provided for in this act, thirty per centum *ad valorem*."

Act of March 3, 1883, Schedule N, 22 Stats. at Large, p. 513.

"Paper, manufactures of, or of which paper is a component material, not specially enumerated or provided for in this act, fifteen per centum *ad valorem*."

Act of March 3, 1883, Schedule M, 22 Stats. at Large, p. 510.

There is a further provision for "books, pamphlets, bound or unbound," and for "blank books, bound or unbound," at 25% and 20% *ad valorem*, to which the protest refers.

Ib.

It further appeared by the uncontradicted testimony in the case that the paper contained in these albums was the component material of chief value (see particularly the testimony of the Government Examiner at folio 20, *et seq.*).

It further appeared that while photographic albums are bound in leather and paper, in plush, in cloth and with wooden covers, that the inside of the album is always made of paper (Record, fol. 22). As one witness states: "I never saw a photographic album without paper inside; the inside is always made of paper, and bound in everything from silk plush down to paper."

At the close of the foregoing testimony plaintiffs rested, and the attorney for the defendant moved for a direction of a verdict in favor of the defendant.

The Court thereupon directed a verdict for the defendant.

Errors Assigned.

The Court erred in directing a verdict for the defendant.

Upon the undisputed facts in the case the plaintiffs were entitled to a verdict and the Court should have denied the defendant's motion. Having denied it, the Court should have directed a verdict for the plaintiffs.

POINTS.

I.

The evidence clearly establishes that, in the goods in question, the paper was the component material of chief value (Rec., pp. 8, 9). "Paper is worth more than all the rest of the material put together" (Rec. top p. 9).

Another fact established by the testimony is that while photographic albums may be bound in many different ways, the paper as a characteristic of the manufacture, is always present.

"The class of goods known as photographic albums are bound in various ways; they come in leather, they come in paper bindings, they come in plush, and they come in cloth. Some of them have had wooden covers on, and I think some are bound in celluloid, but we have not imported celluloid. Have been in present business nearly thirty years. *The inside of the album is always made of paper.* I think the first photograph albums were imported twenty-six or twenty-seven years ago, and the importations have been continued since, the album changing in size and design; they have also been manufactured here. *During all that time the part to hold the picture has been made of paper*" (Rec. 9, 10, fol. 22).

"I never saw a photographic album *without paper inside;* the inside is always made of paper, and bound

in everything from silk plush down to paper" (Rec., p. 12, fol. 26).

It is submitted therefore that the article comes within the first enumeration as a manufacture of paper, because,

(a) Paper is largely the preponderating component material in value;

(b) It is the controlling material; without it you don't have a photographic album, with it the mere outside covers and back may be leather, cloth, wood or any other of the numerous materials which may be, have been, or can be used as a cover or binding for a book or album.

It seems to us that the article in question is clearly a manufacture of paper rather than a manufacture of leather.

II.

Contrasting the two phrases, "of which paper is a component material," and, "of which leather shall be a component part," it cannot be denied that if either one were absent the other *might* apply; but they are both present and it is the duty of the Court to say which is the *correct* description.

We again submit that the provision for paper, properly, and under the circumstances, exclusively describes the article; and upon this point the case of Arthur vs. Sussfield, 96 U. S., 128, is directly applicable and is decisive and controlling.

That case presented a similar difficulty, contrasting provisions being "for manufactures of steel or of which steel shall be a component part," and "manufactures

of glass or of which glass shall be a component material."

Said the Court:

"We prefer to place our opinion upon the connection in which the different articles are found in the statute. Neither in the general use of language nor in commercial designation would it be understood that the unconnected expression, 'of which steel is a component part,' was intended to embrace spectacles. Steel may or may not form a part of the spectacles. The article will be as perfect without steel as with it. On the other hand, the terms 'pebbles for spectacles and all manufacturers of which glass shall be a component material,' naturally connects the glass manufacture with the spectacles. There could be no spectacles without them. The colorless crystals in spectacles, termed pebbles, and the manufactures of glass used in spectacles, embrace the same idea, to wit, of pebbles or glass for spectacles. The section, we think, was intended to impose a duty of forty per cent. on those substances used in the manufacture of spectacles to aid the sight, and which are therein described as pebbles or as glass. The use of spectacles is to aid the sight. The pebbles and the glass are the materials which effect that purpose. The steel is incidental or auxiliary merely, and Congress intended to embrace spectacles under this appropriate designation."

So here the provision, "of which leather shall be a component part," would not in the general use of language nor in commercial designation be understood to include photographic albums. Leather may or may not form a part of such albums; they will be as perfect albums if bound in cloth, wood or paper as if bound in leather.

Again, the use of the photographic album is to hold photographs, the paper is the material which effects that purpose. The binding is a mere auxiliary.

The judgment, therefore, should be reversed.

EDWIN B. SMITH.
STEPHEN G. CLARKE.

Office Supreme Court U. S.
FILED
FEB 27 1892
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1891.

ADOLPH LIEBENROTH ET AL., PLAINTIFFS IN ERROR,
vs.
WILLIAM H. ROBERTSON, LATE COLLECTOR, &c.
} No. 147.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE DEFENDANT IN ERROR.

WM. A. MAURY,
Assistant Attorney-General.

Supreme Court of the United States.

OCTOBER TERM, 1891.

ADOLPH LIEBENROTH ET AL., PLAINTIFFS IN ERROR,
vs.
WILLIAM H. ROBERTSON, LATE COLLECTOR, &c.
} No. 147.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE DEFENDANT IN ERROR.

The whole question in this case is whether photograph albums made of paper and leather—that is to say, made of paper and bound in leather—paper being the largely preponderating element, were dutiable at 30 per cent ad valorem as a manufacture and article of which leather is a component part, under Schedule N, act of March 3, 1883 (22 Stat., 513), or at 15 per cent ad valorem, as a manufacture of which paper is a component material under Schedule M, act March 3, 1883 (22 Stat., 510).

It is clear that the merchandise in question is described in either provision, and would be dutiable under both but

for section 2499 of the act of March 3, 1883, commonly called the similitude clause, which provides, *inter alia*, that "if two or more rates of duty should be applicable to any imported article *it shall be classified for duty under the highest of such rates.*"

But the sole contention in support of this writ of error appears to be that the merchandise was dutiable *as a manufacture of paper*, and that the relative quantity and value of the leather binding is so small as to be merged in the paper, which alone gives character to the manufacture.

This contention is supposed to find support in the case of *Arthur* v. *Sussfield* (96 U. S., 128), but it is difficult to see the applicability of that case, which involved the duty on spectacles in steel frames. The collector had misapplied the law, by holding that the spectacles in question were equally embraced by the provision covering manufactures of which glass is a component material, and by the provision covering manufactures of which steel is a component material, and, therefore, he assessed the duty laid on steel under said section 2499, that being the highest duty.

But this court held that the merchandise should have been classed and taxed as a manufacture of glass, because Congress had manifested a clear purpose to tax spectacles under that head by using the words "*pebbles for spectacles* and all manufactures of which glass shall be a component material." The fact that the "pebbles for spectacles" were set in a steel frame made them none the less "pebbles for spectacles," or spectacles. In a word, articles

are not dutiable under general terms where they are dutiable under specific language. (*Arthur* v. *Morrison*, 96 U. S., 108; *Same* v. *Lahey*, *ib.*, 112; *Same* v. *Unkart*, *ib.*, 118, and other cases.)

If Congress had *specified albums in connection with manufactures of paper* it might be possible to institute a parallel between the two cases, but it is not possible under existing conditions. (*Benziger* v. *Robertson*, 122 U. S., 211; and *Lottimer* v. *Lawrence*, 1 Blatch., 613.)

What fell from the learned judge (Lacombe) on this point at the trial is so satisfactory and conclusive that we give it to the court without further argument on the subject.

> It is provided by section 2499 of the Revised Statutes, as it stands amended by the act of 1883, that if two or more rates of duty should be applicable to any imported article it should be classified for duty under the highest of such rates. The articles in question here are photographic albums, the interior portion of which, intended for the insertion of the photographs, is made of paper, and the albums being bound with various materials, such as paper, leather, plush, cloth, wood, etc. The albums in the particular case now at bar, however, are covered with leather only. It is contended by the plaintiff, first, that the articles are covered by paragraph 384 of Schedule M, which enumerates books, pamphlets, bound or unbound, etc. This contention seems unsound, because upon the principle *noscitur a sociis* the various articles covered by the enumeration of paragraph 384 seem to include only such as are printed or struck from plates or types.
>
> It is further claimed by the plaintiff that if not covered by paragraph 384, the articles are covered by paragraph 385, which provides for blank books, bound or unbound, and blank books for press copying. The testimony of the plaintiff, Van Auw, however, indicates that these albums are not known in trade and commerce as blank books, and therefore they do not come within the enumeration of that paragraph. The plaintiff next claims that if not covered by paragraph 385, they are covered by paragraph 388, which is as follows: "Paper manufactures, or of which paper is a component material, not specially enumerated or provided for in this act, 15 per cent ad valorem." The collector assessed duty at 30 per cent ad valorem under the provisions of paragraph 463, as follows: "All manufactures and articles of leather or of which leather shall be a component part, not specially enumerated or provided for in this act, 30 per cent ad valorem."

In support of plaintiff's contention he refers to the case of *Arthur* v. *Sussfield* (96 U. S., 128). The facts of that case, however, were different from the one at bar, for the reason that in the paragraph in which there was the enumeration "manufactures of glass" there were also included the words "pebbles for spectacles," which indicated quite clearly that the manufactures of glass referred to were intended to include manufactures of glass for optical purposes. The phraseology of each paragraph referred to in the case at bar (388 and 463) correctly describes the particular article imported. It is a manufacture of which paper is a component part. It is also a manufacture or article of which leather is a component part; and it is not, otherwise than as a manufacture of paper or a manufacture of leather, specially enumerated or provided for in the act.

In interpreting the provisions of these tariff acts it must, of course, be assumed that Congress was familiar with the conditions of trade or manufacture at the time, and we must take notice of the circumstances under which they have, for very many years past, been enacted. Such considerations will meet the suggestion that by applying section 2499, and thus assessing these articles for duty at the rate specified for the component material which pays the highest rate, there is no fixed rate for photographic albums, as such. It was quite competent for Congress, if it chose to do so, to provide specifically for photographic albums. They were made and imported long before the passage of this act. They were imported with covers of different materials, and sometimes unbound, the covers being manufactured and put on here. It was very easy for Congress to treat these goods as articles well known in trade and commerce, and in common use, and to include them as such in some specific enumeration. They have not done so, except as the articles may be covered by one or other of these paragraphs which describe them only by their components. It is no doubt the result of such legislation that there is no regular specific duty for the photographic album, as such. But it is to be taken into consideration that when Congress passed these acts it was endeavoring to accommodate a great variety of conflicting interests. Every album imported with a silk cover, to a certain extent interferes with the manufacture of silk here. Every album imported with a leather cover interferes to a certain extent with the manufacture of leather here; and in view of the fact, which is well known to us, that Congress for years has been legislating on revenue amid the clamorous appeals of many conflicting interests, each claiming its share of protection, it is not unreasonable to interpret this section as meaning that these photographic albums, if all paper, shall pay the paper duty; but if they are composed of any other material which is itself protected in the act, then the measure of protection accorded to that other material shall reach over and protect it when it is incorporated in this article. Of course it must enter into the album to a substantial extent, sufficiently so to add to its attractiveness and assist its sale.

For these reasons, I shall direct a verdict for the defendant. Exception by the plaintiff. (33 Fed. Rep., 457.)

This ruling was subsequently followed by the same judge in *Hohenstein* v. *Hedden* (38 Fed. Rep., 94).

It is respectfully submitted that the judgment should be affirmed.

WM. A. MAURY,
Assistant Attorney-General.

FILED
FEB 20 1892
JAMES H. McKENNEY
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1891.

No. 147.

ADOLPH LIEBENROTH, IWAN VON AUW, WILLIAM GRAHAM AND HERMAN SCHLIECHER,

Plaintiffs in Error,

vs.

WILLIAM H. ROBERTSON, LATE COLLECTOR OF THE PORT OF NEW YORK,

Defendant in Error.

BRIEF FOR PLAINTIFFS IN ERROR IN REPLY.

EDWIN B. SMITH,
STEPHEN G. CLARKE,
Of Counsel.

CHARLES CURIE,
44 Exchange Place, New York,
Plaintiffs' Attorney.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

Supreme Court of the United States.

OCTOBER TERM, 1891.

No. 147.

LIEBENROTH *vs.* ROBERTSON.

PLAINTIFF'S REPLY BRIEF.

The Government substantially rests its case upon the oral statement by the learned circuit judge of his reasons for giving that direction of a verdict which we assign for error.

With the most sincere respect for the judge who assigned them as his first, *nisi prius*, impressions of the controversy, and for the Attorney General, who more deliberately adopts them, we still respectfully submit that these reasons do not suffice to sustain the verdict to which they led, as they subject our goods to an inapplicable clause of section 2499 as amended by the act of 1883.

While our "sole contention in support of this writ of error" may appear to be "that the merchandise was dutiable as a manufacture of paper," it is not our *sole* ground for this contention "that the relative quantity and value of the leather binding is so small as to be merged in the paper, which alone gives character to the manufacture." (Appellee's Brief, p. —.)

I.

The basis of contention thus attributed to us is sound, although we further confidently contend that the indisputable fact of paper being "the component material of chief value" entitled us to the classification and rate claimed in our protest because of this fact.

Our first-presented claim is that this is an enumerated article, for the attributed reason that it is, substantially and characteristically, a manufacture of paper.

Arthur *vs.* Butterfield, 125 U. S., 71.

The articles in controversy in that case were chiefly used for women's dresses, and known as brilliantines, alpacas, mohairs, etc. (*id.* 73, top), dutied by the collector as dress goods and claimed by the importer to be dutiable as "manufactures of hair" (*id.* 72, middle). It was in *sustaining this claim* that the Court used this language:

"The fact that 20 per cent. of cotton entered into the composition of the goods and only 80 per cent. of them are of hair *does not change their character as manufactures of hair* within the meaning of the act of 1870. * * * The designation of a cloth as hair, silk, or cotton depends on the *predominance* of such article in its composition, and *not upon absence of any other material.*"

Arthur *vs.* Butterfield, 125 U. S., 75.
Swan *vs.* Arthur, 103 *id.*, 598.
Mason *vs.* Robertson, 139 *id.*, 626, '7, and cases there cited.

The opinion from which the foregoing extract is taken was promulgated March 19, 1888, while the remarks of Judge Lacombe in directing this verdict against us were uttered upon the 5th of the preceding January (33 F. R.,

457), without the benefit of this expression of the Supreme Court's views upon this subject.

These authorities make it apparent that the mere presence of a substantial percentage of other material will not necessarily take an article out of an enumeration as a manufacture of its chief component, whether hair, paper, or anything else. Other considerations determine as to this.

Those which controlled the Sussfield case (cited in 125 U. S., 77, top) still seem to us decisive of this. That the misapplication of law by the collector was in that instance as between steel and glass (Att'y Gen's Br., p. —) and in this as between leather and paper is wholly immaterial. Counsel's suggestion that "if Congress had *specified* albums" a parallel might have been instituted is not only irrelevant but unfounded. Had "albums" been dutied *eo nomine* no inquiry into the value or nature of the components would have been permissible, and there could then be no just "parallel" instituted, because the act of 1864 did not specify spectacles, but they were admitted to be dutiable according to *a* material entering into their composition. The issue there, as here, was simply "which material," (96 U. S., 128–130). The fact that the act of 1864 dutied the "*pebbles for spectacles*" at the rate of manufactures of glass was supposed by the collector's counsel in that case to indicate that when they ceased to be merely pebbles and had been put to their intended use and merged in the completed spectacles (which, we repeat, were not dutiable *eo nomine*) they must be dutied according to the composition of the completed article of commerce under section 2499. But this Court held otherwise in a train of reasoning perfectly applicable to the case at bar. For example, in the extract from 96 U. S., 130, found upon the fifth page of our opening brief, merely substitute "leather" for "steel," "albums" for "spectacles," and "paper" for "glass," and the argument is perfect in support of our contention, thus:

"Neither in the general use of language nor in commer-

cial designation would it be understood that the unconnected expression 'of which leather is a component part' was intended to embrace albums. Leather may or may not form a part of the album. The article will be as perfect without it as with it. On the other hand, the provision for books, bound or unbound, and paper for books or printing (22 Stats., 510) naturally connects the paper manufacture with albums rather than a connection through 'calfskins, tanned,' etc., and 'skins for morocco,' etc. (*id.*, 513), with leather. There could be no album without paper. The colorless sheets in a book or an album and the manufacture of paper used in albums and other books embrace the same idea. The section was intended to impose 15 per cent. on the substance used in the manufacture of books to hold pictures. One use of books is to convey information by illustrations as completely as by the text. The paper in the album is *the* material which effects this purpose. *The leather is incidental or auxiliary merely*," etc., etc.

A similar parallelism will show the judge's line of argument in directing this verdict, if adopted by this Court, would have given a different result to the Sussfield case, thus:

JUDGE LACOMBE'S OBSERVATIONS UPON THE SUSSFIELD CASE

In the paragraph in which there was the enumeration "manufactures of glass" there were also included the words "pebbles for spectacles," which indicated quite clearly that the manufactures of glass referred to were intended to include manufactures of glass for optical purposes. The phraseology of each paragraph referred to in the case at bar (388 and 463) correctly describes the particular article imported. It is a manufacture of which paper is a component part. It is also a manufacture or article of which leather is a component part; and it is not, otherwise than as a manufacture of paper or a manufacture of leather, specially enumerated or provided for in the act.

APPLIED TO THIS CASE.

In the paragraph in which there is an enumeration of "manufactures of paper" there is also included books, &c., and paper for books, &c., which indicated quite clearly that the manufactures of paper referred to were intended to include manufactures of paper for all such purposes as books. The phraseology of each paragraph of the statute construed in the Sussfield case (96 U. S., 128) correctly described the article imported. It was a manufacture of which glass was a component part. It was also a manufacture or article of which steel was a component part; and it was not, otherwise than as a manufacture of glass or a manufacture of steel, specially enumerated or provided for in the act.

In interpreting the provisions of these tariff acts it must, of course, be assumed that Congress was familiar with the conditions of trade or manufacture at the time, and we must take notice of the circumstances under which they have, for very many years past, been enacted. Such considerations will meet the suggestion that by applying section 2499, and thus assessing these articles for duty at the rate specified for the component material which pays the highest rate, there is no fixed rate for photographic albums as such. It was quite competent for Congress, if it chose to do so, to provide specifically for photographic albums. They were made and imported long before the passage of this act. They were imported with covers of different materials, and sometimes unbound, the covers being manufactured and put on here. It was very easy for Congress to treat these goods as articles well known in trade and commerce, and in common use, and to include them as such in some specific enumeration. They have not done so, except as the articles may be covered by one or other of these paragraphs which describe them only by their components. It is no doubt the result of such legislation that there is no regular specific duty for the photographic album, as such. But it is to be taken into consideration that when Congress passed these acts it was endeavoring to accommodate a great variety of conflicting interests. Every album imported with a silk cover to a certain extent interferes with the manufacture of silk here. Every album imported with a leather cover interferes to a certain extent with the manufacture of leather here; and in view of the fact, which is well known to us, that Congress for years has been legislating on revenue amid the clamorous appeals of many conflicting interests, each claiming its share of protection, it is not unreasonable to interpret this section as meaning that these photographic albums, if all paper, shall

In interpreting the provisions of these tariff acts it must, of course, be assumed that Congress was familiar with the conditions of trade or manufacture at the time, and we must take notice of the circumstances under which they have, for very many years past, been enacted. Such considerations will meet the suggestion that by applying section 2499, and thus *assessing these articles for duty at the rate specified for the component material which pays the highest rate*, there is no fixed rate for spectacles as such.

It was quite competent for Congress, if it had chosen to do so, to provide specifically for spectacles. They were made and imported very long prior to the act of June 30, 1864. They were imported with bows of different materials, and sometimes the pebbles or glasses without bows or frames, these being applied to the eyes of the spectacles here. It was very easy for Congress to treat these goods as articles well known in trade and commerce, and in common use, and to include them as such in some specific enumeration. They have not done so, except as the articles may be covered by one or other of these paragraphs which describe them only by their components. It is no doubt the result of such legislation that there was, in the act of 1864, no regular specific duty for spectacles, as such. But it is to be taken into consideration that when Congress passed these acts it was endeavoring to accommodate a great variety of conflicting interests. Every pair of spectacles imported with a steel frame to a certain extent interfered with the manufacture of steel here. Every pair of spectacles with horn bows interfered to a certain extent with horn and bone manufactures here; and in view of the fact, which is well known to us, that Congress for years has been legislating on revenue amid the clamorous appeals of many conflicting interests, each claiming its share of protection, it is not unreasonable to interpret this section as meaning

pay the paper duty; but if they are composed of any other material which is itself protected in the act, then the measure of protection accorded to that other material shall reach over and protect it when it is incorporated in this article. Of course it must enter into the album to a substantial extent, sufficiently so to add to its attractiveness and assist its sale.

that these spectacles, if substantially all glass, shall pay the glass duty; but if they are composed of any other material which is itself protected in the act, then the measure of protection accorded to that other material shall reach over and protect it when it is incorporated in this article. Of course it must have entered into the spectacles to a substantial extent, sufficiently to have added to their attractiveness and assist their sale.

II*f*

We respectfully submit that the verdict was erroneously directed against us through the judge's *entirely ignoring the first amendment* made by the act of 1883 *to section* 2499. (22 Stats., 491.)

The first sentence he uttered related to the *second* amendment made to that section, providing for the contingency of two rates being applicable to an importation; and the sentence commencing "Such considerations" (just beyond the middle of the opinion) clearly shows that he gave the case the direction he did under the false impression that there had been no other change made in this section, but that the provision in the Revised Statutes for dutying according to the rate placed upon the highest dutied component was still in force (R. S., sec. 2499). *The contrary is true.* (22 Stats., 491.)

Under the law in force when our importations were made—

"On all articles manufactured from two or more materials, the duty shall be assessed at the highest rates at which *the component material of chief value* may be chargeable." (*Ibid.*)

In regard to this amendment of section 2499 by the act of 1883—*i. e.*, substituting the highest rate of the *chief* com-

ponent for the highest rate of *any* component—this Court observed:

"It is true that this section, at least in its main provisions, refers solely to non-enumerated articles, and these goods must be considered as enumerated (125 U. S., 71); and yet, though this clause may apply solely to non-enumerated articles, it shows the intent of Congress in reference to a question of the kind presented. Instead of making the duty depend on the highest rate at which any component part is chargeable, it is made to depend on the highest rate at which the component of chief value is chargeable. Applying that idea here, the rate would be that chargeable under Schedule L; for silk, as appears from the findings, is the component of chief value."

Hartranft *vs.* Meyer, 135 U. S., 239, bot.

Without controversy, "the component material of chief value" in our goods was paper. (Rec., 8, 9, top, and fol. 20.)

Hence this amendment required them to be dutied as manufactures of paper. (Q. E. D.)

This is too plain to us for protracted discussion.

III.

The application of this amendment to our imports excludes them from the operation of the concluding clause added by the act of 1883, erroneously applied to them by the collector and the court below, in accordance with which theory the verdict was directed against us.

If the chief component material of an import be an enumerated one, the duty is to be assessed in accordance with that enumeration, and *no other rate has any applicability.* There is only one applicable rate in such case unless that material be more than once enumerated, as is the fact with regard to manufactures of copper in this act of 1883 (22 Stats., page 500, 35 per cent., and page 501, 45 per cent.), and to quinine or Peruvian bark, under the act of 1861.

Powers *vs.* Barney, 5 Blatch., 202.

Doubtless other similar instances might be hunted up if time permitted, but it is unnecessary.

That there are two or more tariff clauses, either of which *standing alone* could be applied to an import, does not make *all* the rates specified therein applicable to the article so as to duty it at the highest, under this concluding amendment of section 2499. If it did, all the specific enumerations of the several schedules of this act of 1883 would be merged in their concluding, component material, clauses wherever these rates exceeded that of the enumerated article. *Ex gr.*, Schedule C puts cotton ties at 35 per cent. (*id.*, 498) and manufactures wholly or in part of iron, etc. (*id.*, 501), at 45 per cent.

No other rate is "applicable" to cotton ties than that specifically applied thereto.

So where the law applies the rate affixed to the component of chief value to the article made chiefly from it, no other rate is "applicable" thereto, and there is not that state of facts existing upon which alone this concluding clause of section 2499 operates. The case is specially provided for by the preceding amendment made to that section by the act of 1883, under which our goods were imported. The clause erroneously applied below is only applicable where the components are of equal value (or the ratio between them unknown) or where the chief component is twice enumerated, etc.

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